

## MINUTES

### ALCOHOL AND TOBACCO COMMISSION

DECEMBER 21, 2010

#### CALL TO ORDER/NOTING OF QUORUM

Chairman Massa called the meeting to order and noted the quorum and the attendance. Present were Vice Chairman Johnson, Commissioner Sturtz and Commissioner Guthrie. Executive Secretary Dunsmore and Superintendent Huskey were also in attendance.

Nicole Upano, Andi Metzel, Marc Carmichael, Mark Webb, John Hill, Jim Reilly, Jim Purucker, Debbie Rolfson, Connie Vickery, Jeff McKean, and Greg Genrich were present as observers.

#### DISPOSITION OF MINUTES

Commissioner Sturtz moved to approve the minutes that were submitted for the December 7, 2010 meeting. Commissioner Guthrie seconded. The motion was unanimously approved.

#### HEARING JUDGE'S RECOMMENDATIONS

PARTIES' AGREED DISPOSITIONS – Vice Chairman Johnson moved to approve the parties' agreed dispositions that were submitted for the December 21, 2010 meeting. Commissioner Sturtz seconded. The motion was unanimously approved.

RR71-26941 SDTG, INC. – Hearing Judge Dunsmore stated an appeal hearing was held regarding this permit application. During that hearing and while reading the proposed findings submitted by the parties, it was found out that the tape of the original local board meeting was inadvertently erased, so there was no record of that meeting. At that meeting, the remonstrator testified, so the record of that testimony was lost. Because of this, Hearing Judge Dunsmore recommended the Commission remand this application to the local board for reinvestigation.

Vice Chairman Johnson moved to uphold the Hearing Judge's recommendation and remand this application. Commissioner Sturtz seconded. The motion was unanimously approved.

#### CONSIDERATION OF APPLICATIONS

Commissioner Sturtz moved to approve and incorporate by reference these lists of permits for renewal, which have been recommended by local boards and reviewed by our staff with the authority of the Commission. Vice Chairman Johnson seconded. The motion was unanimously approved.

Commissioner Sturtz moved to approve and incorporate by reference these lists of permit applications for a new permit, which includes the tabled applications, or applications for

changes in location or ownership or both of existing permits, which have been recommended by local boards and reviewed by at least two Commissioners. Vice Chairman Johnson seconded. The motion was unanimously approved.

Commissioner Sturtz moved to approve and incorporate by reference these lists of permit applications for catering. Commissioner Guthrie seconded. The motion was unanimously approved.

Commissioner Sturtz moved to approve and incorporate by reference these lists of permits to be placed in escrow for not more than five years, which have been reviewed and recommended by a Commissioner as appropriate for escrow. Commissioner Guthrie seconded. The motion was unanimously approved.

Three hundred twenty (320) permits approved for renewal, forty-seven (47) new and/or transfer permits approved, four (4) permits approved for catering, four (4) permits approved for first year escrow, three (3) permits approved for second year escrow, one (1) permit approved for third year escrow, one (1) permit approved for fourth year escrow and three (3) permits approved for fifth year escrow.

### **RENEWAL LETTERS AND WAIVER OF FEES**

Vice Chairman Johnson moved to approve the renewal letters and the waiver of fees for letters of extension for the preceding weeks. Commissioner Guthrie seconded. The motion was unanimously approved.

### **APPLICATIONS FOR DISCUSSION**

RR03-27446 EL TOREO I CORP. – Commissioner Guthrie noted this is a new type 209 application with the local board voting three (3) to one (1) to approve.

Commissioner Guthrie moved to uphold the local board and approve the new permit. Commissioner Sturtz seconded. The motion was unanimously approved.

DL13-26119 HOOK-SUPERX, LLC - Commissioner Guthrie noted this is a type 208 renewal application with the local board voting two (2) to one (1) to disapprove.

Commissioner Guthrie stated there are no grounds listed on the voting sheet to justify the negative votes. And when asked about the voting, the local board members refused to give a reason. Those two members voted the same way last year. The Excise officer sitting on the board recommended approval of the renewal

Commissioner Guthrie moved to reverse the local board and approve this renewal. Vice Chairman Johnson seconded. The motion was unanimously approved.

RR49-08536 WORKING TITLE, LLC – Commissioner Guthrie noted this is a type 210 renewal application and a transfer of ownership application with the local board voting four (4) to zero (0) to approve the renewal and three (3) to one (1) to approve the transfer.

Commissioner Guthrie stated Andi Metzel, attorney for the remonstrators, requested the Commission allow her to speak regarding these applications.

Attorney Metzel stated there appears to be a couple of procedural matters that are of concern regarding these applications. First of all, the permit expired in May of 2010, subject to two violations. Renewals were not filed until August of 2010. Also, a transfer of ownership was filed in September of 2010. There are also pending violations. Ms. Metzel noted that pursuant to statute, a permit may only be transferred if there is at least three months of unexpired life left on the permit, which she pointed out that the permit had no life left, because it expired four months prior to the filing of the transfer.

Attorney Metzel requested the Commission look at 7.1 to see how it is applied to the Commission's policies. And, if permits are going to be allowed to expire and then be subject to transfer, maybe the policies need to be different or the statutes need to be changed.

Jeff McKean, attorney for the transfer applicant, stated he was informed last evening, by ATC Staff Attorney Melissa Coxey and Attorney Metzel, about this meeting. Mr. McKean said regarding the renewal that it is not out of the ordinary for renewals to be filed on expired permits. And as far as the violations are concerned, the local board was informed that the violations were clear. However, there is another violation that is not clear. Attorney McKean requested the Commission allow him the opportunity to clear the violations before making any decisions in this matter.

Commissioner Guthrie asked Mr. McKean if he was aware of the statute that states a permit is null and void after the expiration date. Attorney McKean stated he was not aware of that statute, but felt the Commission's policy in that regard is sound because it keeps permits in operation. Commissioner Guthrie suggested that it might be beneficial for that statute to be addressed regarding this matter.

Vice Chairman Johnson asked Attorney Metzel if she represented a competitor. She said that she did, but also others in the neighborhood who are not competitors.

Commissioner Guthrie moved to table this matter for further investigation. Vice Chairman Johnson seconded. The motion was approved unanimously.

### **INACTIVE FILES**

INACTIVE FILES- Vice Chairman Johnson moved to make twenty-four (24) permits inactive. Seventeen (17) permits are not subject to auction and seven (7) permits are subject to auction. Commissioner Sturtz seconded. The motion was unanimously approved.

### **OLD BUSINESS**

No Old Business

**NEW BUSINESS**

No New Business

**POLICY DETERMINATIONS**

No Policy Determinations

**ANNOUNCEMENTS**

No Announcements

**ADJOURNMENT**

Commissioner Sturtz moved to adjourn the meeting. Commissioner Guthrie seconded. The motion was unanimously approved.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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MARK S. MASSA, CHAIRMAN

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DAVID JOHNSON, VICE CHAIR

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DALE STURTZ, COMMISSIONER

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FRANK GUTHRIE, COMMISSIONER